

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL A. WOOD,

Plaintiff,

V.

UNITED STATES OF AMERICA, et al.,

### Defendants.

CASE NO. 2:22-CV-636-DGE-DWC

**ORDER DIRECTING SERVICE OF  
CIVIL RIGHTS COMPLAINT**

14 This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding  
15 with this action *in forma pauperis*. While Plaintiff has counsel, the Court undertook the service  
16 of Plaintiff's complaint when he initial filed this action. At this time, the Court finds Defendant  
17 Merritt has not been served. The Court, having reviewed plaintiff's third amended complaint,  
18 hereby ORDERS as follows:

(1) Service by Clerk

20 The Clerk is directed to send the following to Defendant A. Merritt by first class mail: a  
21 copy of plaintiff's complaint, a copy of this Order, two copies of the notice of lawsuit and  
22 request for waiver of service of summons, a waiver of service of summons, and a return  
23 envelope, postage prepaid, addressed to the Clerk's Office.

1                   (2)     Response Required

2                 Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of  
3 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60)**  
4 **days** after the date designated on the notice of lawsuit to file and serve an answer to the  
5 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

6                 A defendant who fails to timely return the signed waiver will be personally served with a  
7 summons and complaint, and may be required to pay the full costs of such service, pursuant to  
8 Rule 4(d)(2) of the Federal Rules of Civil Procedure.

9                   (3)     Filing and Service by Parties, Generally

10               All attorneys admitted to practice before this Court are required to file documents  
11 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,  
12 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.  
13 All non-attorneys, such as *pro se* parties and/or prisoners, may continue to file a paper original  
14 with the Clerk. All filings, whether filed electronically or in traditional paper format, must  
15 indicate in the upper right hand corner the name of the magistrate judge to whom the document  
16 is directed.

17               Any document filed with the Court must be accompanied by proof that it has been served  
18 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs  
19 subject to the Court's E-Filing Initiative shall indicate the date the document is submitted for e-  
20 filing as the date of service.

21                   (4)     Non-State Defendants

22               As a registered user of the Court's electronic filing system, you must accept electronic  
23 service of all court filings (**except** original service of a complaint) by prisoner litigants housed at

1 facilities actively engaged in the Prisoner E-Filing Initiative. Prisoner litigants incarcerated at  
2 facilities actively engaged in the Prisoner E-Filing Initiative are no longer required to serve their  
3 court filings on the Court or defendants by mail. Service by mail of your court filings to prison  
4 litigants housed in facilities actively engaged in the Prisoner E-Filing Initiative is also no longer  
5 required.

6 (5) Motions, Generally

7 Any request for court action shall be set forth in a motion, properly filed and served.

8 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a  
9 part of the motion itself and not in a separate document. The motion shall include in its caption  
10 (immediately below the title of the motion) a designation of the date the motion is to be noted for  
11 consideration upon the Court's motion calendar.

12 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for  
13 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),  
14 motions for default, requests for the clerk to enter default judgment, and motions for the court to  
15 enter default judgment where the opposing party has not appeared shall be noted for  
16 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions  
17 shall be noted for consideration no earlier than the third Friday following filing and service of the  
18 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier  
19 than the fourth Friday following filing and service of the motion. *Id.*

20 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-  
21 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday  
22 immediately preceding the date designated for consideration of the motion.

23

1       The party making the motion may file and serve, not later than 11:59 p.m. on the date  
2 designated for consideration of the motion, a reply to the opposing party's briefs and affidavits.

3       (6)     Motions to Dismiss and Motions for Summary Judgment

4       Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil  
5 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil  
6 Procedure should acquaint themselves with those rules. As noted above, these motions shall be  
7 noted for consideration no earlier than the fourth Friday following filing and service of the  
8 motion.

9       Defendants filing motions to dismiss or motions for summary judge are advised that they  
10 MUST serve *Rand* and *Wyatt* notices concurrently with motions to dismiss and motions for  
11 summary judgment so that *pro se* prisoner plaintiffs will have fair, timely and adequate notice of  
12 what is required of them in order to oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941  
13 (9th Cir. 2012). The Ninth Circuit has set forth model language for such notices:

14       A motion for summary judgment under Rule 56 of the Federal Rules of Civil  
15 Procedure will, if granted, end your case.

16       Rule 56 tells you what you must do in order to oppose a motion for summary  
17 judgment. Generally, summary judgment must be granted when there is no genuine  
18 issue of material fact – that is, if there is no real dispute about any fact that would  
19 affect the result of your case, the party who asked for summary judgment is entitled  
20 to judgment as a matter of law, which will end your case. When a party you are  
21 suing makes a motion for summary judgment that is properly supported by  
22 declarations (or other sworn testimony), you cannot simply rely on what your  
complaint says. Instead, **you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.**

*Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added); see *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003) (extending the fair notice requirement to motions to dismiss for failure to exhaust administrative remedies).

4 Defendants who fail to file and serve the required *Rand* and *Wyatt* notices on plaintiff  
5 may have their motion stricken from the Court's calendar with leave to re-file.

**(7) Direct Communications with District Judge or Magistrate Judge**

No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

9 (8) The Clerk is directed to send copies of this Order to plaintiff. The Clerk is further  
10 directed send a copy of this Order and a courtesy copy of plaintiff's third amended complaint  
11 (Dkt. 153) to the Bremerton City Attorney's Office, by first-class mail.

Dated this 30th day of April, 2025.

  
David W. Christel  
United States Magistrate Judge